

ROBERT G. YOUNG

IBLA 84-112

Decided June 20, 1985

Appeal from decision of the Utah State Office, Bureau of Land Management, declaring 223 lode mining claims invalid.

Dismissed.

1. Administrative Practice -- Appeals -- Practice Before the Department
-- Rules of Practice: Appeals: Dismissal

An appeal brought by a person who does not fall within any of the categories of persons authorized by regulation to practice before the Department is subject to dismissal. Where the record does not show the party presenting the appeal is qualified under the regulations, the appeal will be dismissed.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation

A mining claim is properly declared void where a copy of the recorded notice of location is not filed pursuant to 43 U.S.C. § 1744(b) (1982) and 43 CFR 3833.1-2 in the proper BLM office within 90 days after the date of location.

APPEARANCES: Robert G. Young, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

On October 5, 1983, copies of the notices of location for Four Musks #1-82 (U MC 268798 through U MC 268879), Joy #1-36 (U MC 268880 through U MC 268915), Brinks #1-72 (U MC 268916 through U MC 268987), and Nip #1-68 (U MC 268988 through U MC 269055) lode mining claims were filed in the Utah State Office, Bureau of Land Management (BLM). These documents indicate that the 258 claims were located by William W. Walker and Lola L. Wilson in June and July 1983 on public lands in T. 19 S., R. 24 E.; T. 20 S., R. 23 E.; T. 20 S., R. 24 E.; T. 21 S., R. 23 E., Salt Lake Meridian, Grand County, Utah. The Utah State Office, BLM, declared 223 of the claims invalid in a decision dated October 18, 1983, for the stated reason that the owner of the claims failed to file with BLM a copy of the recorded certificate of location within 90 days after the date of location. 1/

1/ The 223 claims are shown in appendix A, attached.

[1] An appeal of BLM's decision was timely received in the Utah State Office, but was signed "Robert G. Young" preceding the typewritten entry "Robert G. Young, William W. Walker, et al" and is styled in the first person singular. The file does not reflect any interest in the subject mining claims in Robert G. Young. However, the record shows the documents sent to BLM for filing and the filing fees were submitted by Young. Either Young has an undocumented interest in the claims or has merely performed a filing service for the owners. The record on appeal indicates the latter possibility. Departmental regulation 43 CFR 1.3 defines who may practice before the Department; Young has made no showing of qualification under this regulation. An appeal brought by a person who does not fall within any of the categories of persons authorized by the regulation to practice before the Department is subject to dismissal. Ganawas Corp., 85 IBLA 250 (1985); Robert N. Caldwell, 79 IBLA 141 (1984); Anthony O'Brien, 77 IBLA 154 (1983), and cases cited therein. An individual or business performing a service for a client is not qualified to appear before the Board on behalf of that client. E.g., Robert N. Caldwell, *supra*; Anthony O'Brien, *supra*; Donald E. Hook, 76 IBLA 367 (1983); John H. Trigg, 74 IBLA 52 (1982); William L. Burney, 72 IBLA 62 (1983). Because the record does not substantiate a basis for Young's appearance before the Board, the appeal is dismissed. Even should Young possess an undisclosed ownership interest in the claims, however, a petition to the Board to reconsider this dismissal would be pointless, for were we to consider this appeal on its merits, we would affirm BLM's decision.

In his statement of reasons Young claims he has "spent much time and money staking these claims," and will stand to lose much if the claims are invalid. He alleges the late filings were "caused by misinformation at the courthouse," where he was purportedly told he had 90 days from the day of recording the notices of location to file copies with BLM. He argues that he has acted in "good faith" and should be afforded "just consideration."

[2] All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. 44 U.S.C. §§ 1507, 1510 (1982); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Mac A. Stevens, 83 IBLA 164 (1984). Section 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1982), requires the owner of an unpatented mining claim located after October 21, 1976, to file with BLM a copy of the official record of the notice or certificate of location within 90 days after the date of location. See also 43 CFR 3833.1-2. This requirement is mandatory, and failure to timely file results in a conclusive presumption of abandonment by the owner. 43 U.S.C. § 1744(c) (1982); 43 CFR 3833.4. The date of a mineral location on public land is determined by the laws of the jurisdiction where the claim is situated. 43 CFR 3831.1; Ray L. Virg-in, 33 IBLA 354 (1978). Utah law provides that a location is accomplished where the boundaries of the claim have been identified and marked and a notice has been posted to a boundary monument. Utah Code Ann. § 40-1-2 (1953); Bradshaw v. Miller, 377 P.2d 781, 783 (1963). The 223 claims declared invalid by BLM were purported in their respective notices of location to have been located before July 7, 1983. 2/ The 90th day preceding

2/ Two of the 223 claims declared invalid (U MC 268804 and U MC 268923) were represented by notices of location where the provided location date was incomplete: "Located this 26 day of , A.D. 1983" and "Located this 29th day of , A.D. 1983." Circumstantial evidence of record indicates both claims were located in June.

the October 5, 1983, filing date with BLM was July 7, 1983. Thus, the 90-day deadline imposed by section 314(b) was not met for these claims.

Responsibility for compliance with this recordation requirement rests with the owner of an unpatented claim. Those claims for which timely filings are not received by BLM are extinguished automatically by operation of law; intent is irrelevant if the necessary filings are not made. See United States v. Locke, 105 S. Ct. 1785 (1985); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). Neither BLM nor the Board has authority to waive or excuse noncompliance with the statute. Id. Accordingly, where the record does not disclose that the required documents were timely received by BLM, the claims were properly declared void.

In passing, we note that implicit in BLM's decision is the determination that the required instruments were timely filed for 35 claims. The record clearly supports such conclusion for 33 claims, i.e., Brinks #57-71 (U MC 268972 through U MC 268986), Joy #19-36 (U MC 268898 through U MC 268915), located July 7 and 8, 1983, respectively. However, BLM also accepted as valid the recorded notice of a claim for which the stated location date is suspicious. The date of location for Joy #10 (U MC 268889), is shown on the location notice as July 25, 1983. As noted, Utah law provides that location occurs when the boundaries are marked and a notice is posted. However, a notice of location for the claim must be recorded in the county recorder's office within 30 days after location. Utah Code Ann. § 40-1-4 (1953). The location notice for Joy #10 indicates that it was recorded on July 8, 1983, or before the day the claim was located if we are to trust the statement. The date of location for a claim in Utah is a question of fact which may be challenged. See Rummell v. Bailey, 320 P.2d 653 (1958). Circumstantial evidence in the record indicates the claim was located at the same time as adjacent claims, i.e., June 25, 1983. Accordingly, the validity of this filing should be scrutinized. By comparison, the location notice for Brinks #72 (U MC 268987) specified its location date as "this July day of , A.D. 1983." ^{3/} Circumstantial evidence shows that the claim was located on July 8, 1983, and this filing with BLM was therefore properly accepted as timely.

Therefore, pursuant to the authority delegated the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

Franklin D. Arness
Administrative Judge

We concur:
Gail M. Frazier Will A. Irwin
Administrative Judge

Administrative Judge

^{3/} See note 2.

APPENDIX A

<u>Name</u>	<u>Serial Number</u>	<u>Date of</u>	<u>Location</u>
Four Musks #1-28	U MC 268798 through U MC 268825	June 26, 1983	
Four Musks #29-36	U MC 268826 through U MC 268833	June 28, 1983	
Four Musks #37-82	U MC 268834 through U MC 268879	June 29, 1983	
Joy #1-9	U MC 268880 through U MC 268888	June 25, 1983	
Joy #10-18	U MC 268889 through U MC 268897	June 25, 1983	
Brinks #1-16	U MC 268916 through U MC 268931	June 29, 1983	
Brinks #17	U MC 268932	June 27, 1983	
Brinks #18	U MC 268933	June 29, 1983	
Brinks #19-36	U MC 268934 through U MC 268951	June 30, 1983	
Brinks #37-40	U MC 268952 through U MC 268955	July 1, 1983	
Brinks #41-56	U MC 268956 through U MC 268971	July 5, 1983	
Nip #1-33	U MC 268988 through U MC 269020	July 4, 1983	
Nip #34	U MC 269021	June 26, 1983	
Nip #35-50	U MC 269022 through U MC 269037	July 4, 1983	
Nip #51	U MC 269038	July 5, 1983	
Nip #52-59	U MC 269039 through U MC 269046	July 4, 1983	
Nip #60	U MC 269047	July 5, 1983	
Nip #61-68	U MC 269048 through U MC 269055	July 4, 1983	

